

**BEFORE THE LAND USE HEARINGS EXAMINER
OF CLARK COUNTY, WASHINGTON**

Regarding an application by Genteel Investments, LLC for) **FINAL ORDER**
approval of a preliminary plat to divide 40.35-acres into 15)
lots in the ML zone east of NE 49th Avenue, south of NE) **PLD 2004-00082¹**
68th Street, in unincorporated Clark County, Washington) **(Cold Creek Industrial Park)**

A. SUMMARY

1. The applicant requests approval to divide the 40.35-acre site into 15 lots for light industrial development. All proposed lots will comply with the minimum dimensional standards for the ML zone.

a. The City of Vancouver will provide domestic water and sanitary sewer service.

b. The applicant will dedicate right of way for and will improve extensions of NE 40th and 47th Avenues along the west and east boundaries of the site. The applicant will extend a new east-west public street, proposed NE 68th Street, through the site between NE 40th and 47th Avenues. The applicant proposed to divide the east-bound and westbound lanes of 68th Street into separate one-way streets, subject to Board of County Commissioner' (the "Board") approval. The applicant proposed to create three new north-south streets to connect the east-bound and westbound sections of 68th Street and enhance traffic circulation within the site. All of the proposed lots will have access to NE 68th Street and/or 40th and 47th Avenues.

c. The applicant proposed to modify and enhance the existing Cold Creek drainage ditch to create a regional stormwater detention facility on the site between the eastbound and westbound sections of proposed 68th Street. The applicant proposes to collect storm water from impervious areas on the site, treat it in bio-filtration swales or roadside filter strips and convey it the modified Cold Creek ditch for detention and discharge via the existing downstream storm sewer system.

2. The County issued a Determination of Nonsignificance ("DNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). Hearings Examiner Joe Turner (the "examiner") conducted a public hearing about the application. County staff recommended that the examiner approve the application subject to conditions. See the Development & Environmental Review Staff Report & Recommendation to the Hearings Examiner dated November 9, 2004 (the "Staff Report"). The applicant accepted those findings and conditions without objections or corrections. The property owner and representatives of two neighborhood associations testified in support of the application. One person testified at the hearing with objections

¹ This decision also addresses SEP2004-00146, EVR2004-00075 and the Road Modification requests.

and questions. The “Clark County Water Quality Resource Counsel” testified in writing. Exhibit 14. Disputed issues or concerns in the case include the following:.

- a. Whether future development on the site will connect to the sanitary sewer;
- b. Whether area streets can accommodate additional traffic generated by the proposed development;
- c. Whether the examiner has the authority to review the rezoning of the site; and
- d. Whether the proposed development on the site will impact the value of surrounding properties and whether such impacts are relevant to the applicable approval criteria..

3. Based on the findings provided or incorporated herein, the examiner approves the subdivision subject to the conditions at the conclusion of this final order.

B. HEARING AND RECORD

1. The examiner received testimony at a public hearing about this application on November 23, 2004. That testimony and evidence, including a videotape of the public hearing and the case file maintained by the Department of Community Development (“DCD”), are included herein as exhibits. A list of the exhibits is attached to and incorporated into this final order. The exhibits are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. County planner Alan Boguslawski summarized the substance of the Staff Report and showed photographs of the site. He noted that the County utilized the optional SEPA process pursuant to CCC 40.570.040.E. The County initially issued a “Likely DNS” for the proposed development. The County considered the comments it received in response to that notice and issued a final DNS. The County’s SEPA determination was not appealed and is now final.

a. He noted that the County rezoned the site from ML (Light Industrial) to BP (Business Park) on September 22, 2004. However the application vested on June 10, 2004, prior to the effective date of the BP zoning. Therefore, the subdivision application is subject to review under the ML zoning. Future development on the individual lots will be subject to zoning and other ordinances in effect when future applications are vested. CCC 40.510.020(G).

b. He noted that the existing section of NE 47th Avenue north of the site is inadequate to accommodate industrial traffic. Therefore the applicant will install a barricade to prevent access to that section of the street.

c. He noted that the applicant volunteered to construct offsite improvements to the intersection of NE 68th Street and St. Johns Road. The applicant will construct a southbound left turn lane on St. Johns Road and a westbound left turn lane on NE 68th Street. This is required by conditions of approval A-2, 3 and 4. The applicant also volunteered to install a traffic signal at the intersection of 47th Avenue and Minnehaha Street. This is required by condition of approval A-5.

d. He noted that the Board must approve the proposed one-way streets and 25-mph speed limit for the on-site section of NE 68th Street.

3. County concurrency engineer Steve Schulte initially testified that the applicant did not expressly volunteer to construct all of the offsite improvements. Therefore he recommended the examiner deny the applications. However the applicant subsequently provided a written statement volunteering to construct the offsite improvements to the intersections of NE 68th Street and St. Johns Road and 47th Avenue and Minnehaha Street. Exhibit 33. Therefore he recommended the examiner approve the application, subject to the conditions of approval in the Staff Report.

4. Planner Roy Heikkala, landscape architect Jim Walsh and civil engineer Tim Leavitt testified for the applicant, Genteel Investments, LLC.

a. Mr. Heikkala summarized the design of the proposed development. He testified that the applicant intends to create “a park-like setting” on the site with a variety of lot sizes to accommodate various types of light industrial uses. The applicant designed the roads on the site to minimize impacts to the surrounding residential neighborhoods.

b. Mr. Walsh summarized the design of the proposed open space tracts and stormwater facilities.

c. Mr. Leavitt summarized the engineering for the site. He testified that the applicant designed a regional stormwater facility to provide stormwater detention for the entire site, including future development on the individual lots. The proposed facility will release stormwater runoff from the site at substantially less than predevelopment rates. He accepted the findings and conditions in the Staff Report without objections or corrections. The applicant is willing to construct the offsite intersection improvements at NE 68th Street and St. Johns Road and 47th Avenue and Minnehaha Street.

5. Bud Van Cleeve, president of the NE Hazel Dell Neighborhood Association, testified in support of the application. He opined that the proposed development will create a safe and pleasant walking area for employees and residents of the area.

6. Heidi Rosenberg testified in support of the application on behalf of the property owner, the Vancouver School District. She noted that the School District acquired the site for construction of a high school. However the School District later determined that the site would not serve its needs due to the proximity of the BPA transmission lines south of the site.

7. Larry Brown, chair of the Minnehaha Neighborhood Association, testified in support of the application. He urged the applicant to leave Cold Creek as an open channel through the site to provide habitat for wildlife. He questioned whether the Code limits the amount of lot coverage for future development on the individual lots. He expressed concern that traffic generated by the proposed development and future development in the area will have an adverse impact on the surrounding neighborhood.

8. Scott Clausen argued that the County's recent rezoning of his property east of the site from ML to BP devalued his property and precluded him from developing it. He expressed concern that development on the site may further impact the value of his property.

9. The examiner closed the record at the end of the hearing and announced his intention to approve the application subject to the conditions recommended by County staff.

C. DISCUSSION

1. County staff recommended that the examiner approve the preliminary subdivision plat, based on the affirmative findings and subject to conditions of approval in the Staff Report. The applicant accepted those findings and conditions without exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report show that the proposed applications do or can comply with the applicable standards of the County Code and Revised Code of Washington, provided that the applicant complies with recommended conditions of approval as amended herein. The examiner adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the findings in this order.

3. The Clark County Water Quality Resource Counsel (the "Counsel") "challenged" the County's SEPA determination. Exhibit 14. However the Counsel did not file a written appeal of the County's SEPA determination as required by CCC 40.570.080.D. Therefore the County's SEPA determination is final.

4. The Counsel expressed concern that industrial development on the site may cause significant groundwater contamination. However it appears that their concerns are based on a misunderstanding. The County did not "suspend" sewer connection requirements on this site. The applicant is required to extend sewer lines through the site and provide stubs to the individual lots. See condition of approval A-22. Future developments on the proposed lots will be required to connect to the public sewer system. No on-site sewage disposal is proposed.

5. The proposed development will generate increased traffic on area streets. That increased traffic will be perceptible to area residents and will increase congestion in the

area. However the County Engineer determined that it will not exceed the capacity of streets nor create a hazard, provided the applicant constructs certain on-site and off-site road improvements. The applicant volunteered to construct the improvements. See Exhibit 33. The applicant will install turn-lanes at the intersections of NE 68th Street and St. Johns Road and a traffic signal at the intersection of 47th Avenue and Minnehaha Street. In addition, the applicant will install a barricade to prevent traffic generated on the site from traveling on the under-improved section of NE 47th Avenue north of the site. The proposed street improvements will direct site generated traffic onto the arterial street system and away from surrounding residential neighborhoods. Therefore the hearings officer finds, based on the expert testimony of the County engineer, that area streets can accommodate traffic generated by the proposed development. There is no substantial evidence to the contrary.

a. The applicant volunteered to construct the left turn lane improvements at the intersection of St. Johns Road and NE 68th Street. Therefore the last sentence of Condition A-2 can be deleted.

6. Future development on the individual lots will be subject to the use and development restrictions, including lot coverage requirements, of the BP zone in CCC 40.230.040. The County will review any future development the site plan review process to ensure compliance with those criteria. See Condition B.1.

7. The section of Cold Creek flowing through the site is an artificial wetland (drainage ditch) that is exempt from County regulation. The applicant will install culverts and pipes to convey the Cold Creek drainage ditch beneath the proposed streets. However the applicant proposed to retain the majority of the ditch as an open channel. The applicant will widen portions of the existing ditch within proposed Tracts B and C to provide stormwater detention on the site. In addition, the applicant will plant landscaping within and abutting the channel to provide wildlife habitat and stormwater treatment. See Exhibit 5.

8. The Board rezoned the site and surrounding properties from ML to BP on September 22, 2004. The examiner has no authority to reconsider that legislative decision in this proceeding. If neighboring residents believe the rezone precludes their ability to develop their property, they should consult an attorney to advise them.

9. The examiner finds that concerns about potential property value impacts are irrelevant. There is no substantial evidence that the proposed development will impact the value of surrounding properties. Even if the proposed subdivision will have an adverse impact on property values, protection of property value is not relevant to the applicable State or County standards. The examiner must base the decision on the laws of Clark County and Washington State.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that the preliminary plat for PLD 2004-00082 (Cold Creek Industrial Park) should be approved, because it does or can comply with the applicable standards of the Clark County Code and the Revised Code of the State of Washington, subject to conditions of approval necessary to ensure the final plat and resulting development will comply with the Code.

E. DECISION

Based on the foregoing findings and except as conditioned below, the examiner hereby approves PLD 2004-00082 (Cold Creek Industrial Park) and related applications in general conformance with the applicant's proposal (Exhibits 5 and 6) and the plans and reports associated with this proposal (Exhibits 7, 8, 17, 23, 29, 30, and 33). This approval is granted subject to the requirements that the applicant, owner or subsequent developer (the "applicant") shall comply with all applicable code provisions, laws and standards and the following conditions. These conditions shall be interpreted and implemented consistently with the foregoing findings.

A. Conditions that must be met prior to Final Plat Approval

- A-1** The applicant shall reimburse the county for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$1,500. The reimbursement shall be made prior to final plat approval.
- A-2** The applicant shall install a separate southbound left turn lane and all related features on NE St. Johns Road at the intersection with NE 68th Street, and provide storage adequate to accommodate the 95th percentile vehicle queues, unless otherwise directed by the Director of Public Works. The turn lane shall be operational according to approved plans prior to final plat approval.
- A-3** The applicant shall install separate westbound left and right turn lanes and all related features on NE 68th Street at the intersection with NE St. Johns Road, and provide storage adequate to accommodate the 95th percentile vehicle queues, unless otherwise directed by the Director of Public Works. The turn lanes shall be operational according to approved plans prior to final plat approval.
- A-4** The applicant shall submit a signing and striping plan and a reimbursable work order authorizing Clark County Road Operations to perform the required signing and striping within the county right-of-way. This plan and work order shall be approved by the Department of Public Works Transportation prior final plat approval.
- A-5** The applicant shall install a traffic signal at the NE 47th Avenue and NE Minnehaha intersection and all related features unless otherwise directed by the Director of Public Works. The turn lanes shall provide storage adequate to

accommodate the 95th percentile vehicle queues. The signal shall be operational according to approved plans prior to final plat approval.

Establishment of a Latecomer Reimbursement Area is a legislative action, requiring a public hearing and Board of County Commissioners approval. Transportation staff will familiarize the applicant with the requirements and assist in the processing of the application.

- A-6** The applicant shall reimburse the City of Vancouver for the cost of concurrency modeling incurred in determining the impact of the proposed development, in the amount of \$5,760.00.

The applicant shall also pay City construction inspection fees if off-site mitigation is required in City right-of-way.

- A-7** The applicant shall extend NE 40th and NE 47th Avenues in accordance with the minimum standards of a Primary Industrial Road, as shown on CCC Table 40.350.030-6 and the Standard Details Manual, Standard Drawing #21. The applicant shall provide temporary turnarounds as required to meet county standards. The applicant shall coordinate the extension and connection to NE 47th Avenue with the developer of the adjacent Minnehaha Business Park to ensure that a smooth and serviceable roadway connection is provided prior to final plat approval.

- A-8** Prior to final engineering plan approval the applicant shall demonstrate that the proposed road geometry is wide enough to accommodate the turning movements of the heavy vehicles which will service the industrial park. The recommended design vehicle is an AAHSTO WB-50 truck. Because of the curvilinear alignment of the roadway, no driveway can be considered “typical,” and turning movements shall be shown at each driveway.

- A-9** Public access easements shall be provided for all locations where the sidewalks leave the public right-of-way along on-site NE 68th Street. All sidewalks, driveway aprons, and road intersections shall comply with the Americans with Disabilities Act.

- A-10** Proposed intersections and driveways shall be constructed accordance with the sight distance requirements of CCC 40.350.030(B)(8).

- A-11** Prior to approval of the final plat, the applicant shall obtain the approval of Board of County Commissioners for the proposed use of one-way roads and the proposed reduction of the design speed limit to 25 mph. The applicant shall obtain the approval from the appropriate decision-making authority of the proposed prohibition of parking on NE 68th Street.

- A-12** The proposed stormwater pipes at the east end of the site shall adequately convey flows received from the upstream properties, and not result in any blockage of flow.
- A-13** In accordance with the requirements of CCC 40.380.040(C)(1)(g), no development shall be allowed to materially increase or concentrate flows onto an adjacent property. This development shall account for flood storage in the existing channel and the effect of existing constrictions on and off the site on flow capacity, water quality, and flood storage.
- A-14** In accordance with CCC 40.380.040(C)(3), detention facilities shall be sized to detain the post-development stormwater runoff from the development, and only release runoff at a peak release rate equal to one-half of the pre-developed 2-year storm peak runoff rate; and not exceeding 10-year and 100-year pre-developed runoff rates. The applicant shall carefully evaluate the accommodation of offsite drainage that contributes to the project site, as it could adversely impact the size, configuration, or appurtenances associated with the detention facility.
- A-15** The final stormwater report and plans shall clearly show that the biofiltration swales will not be inundated during the water quality event.
- A-16** The final stormwater report and plans shall clearly describe the measures to be used to provide water quality treatment in compliance with county standards in the vicinity of NE 40th Avenue.
- A-17** The existing easement for Cold Creek shall be extinguished and replaced along the proposed realignment. Due to the depth and large diameter required to convey the flow of Cold Creek, this easement will likely be wider than the minimum 20-foot wide storm sewer easement.
- A-18** The construction plans shall address the manner in which existing flows within Cold Creek are to be controlled during construction.
- A-19** The proposed lots shall be designed to provide positive drainage from the bottom of footings to an approved stormwater system.
- A-20** Easements or a covenant acceptable to the county shall be provided to the county for purposes of inspection of the privately maintained stormwater facilities.
- A-21** The applicant shall provide fire hydrants such that the maximum spacing between hydrants does not exceed as measured along approved fire apparatus access roads. Hydrant locations shall be approved by the Vancouver Fire Department. Unless waived by the fire district chief fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. The applicant shall provide and maintain a six-foot clear space completely around every fire hydrant.

- A-22** The applicant shall provide documentation from the City of Vancouver that water and sewer connections to the new lots have been installed and approved.

B. Conditions that must be met <u>prior to issuance of Building Permits</u>
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- B-1** Prior to establishing any uses on this site and prior to issuance of a building permit for any lot on this plat, the applicant shall obtain final site plan approval in accordance with CCC 40.520.040.
- B-2** Prior to any excavation and construction on the site, the applicant shall notify the contractors to be alert for contamination on the site. If contamination is discovered, it shall be reported to the Washington Department of Ecology. Sampling of the potentially contaminated media shall be conducted. Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300.
- B-3** Prior to issuance of any building or grading permits for the development site, the applicant shall obtain written approval from Clark County Department of Public Works of the applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system.

The applicant shall maintain all existing signs within the public right of way within the limits of the development's construction until the public roads have been accepted by the county. The developer shall install and maintain temporary signs where the development's signing and striping plan shows new or modified warning or regulatory signs. New or modified temporary signing shall be installed when any connection is made to the public road network. The developer shall remove the temporary signs immediately after the county installs the permanent signing and striping.

- B-4** Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process.

C. Notes Required on Final Plat
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The following notes shall be placed on the final plat:

Archaeological:

- C-1** "If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to

comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."

Critical Aquifer Recharge Areas:

- C-2** "The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."

Erosion Control:

- C-3** "Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."

Utilities:

- C-4** "An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

Privately Owned Stormwater Facilities:

- C-5** "The developer is responsible for long-term maintenance of the privately owned stormwater facilities."

Driveways:

- C-6** "All driveway approaches entering public roads are required to comply with CCC 40.350."

D. Standard Conditions

This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

Land Division:

- D-1** Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.

Final Construction Plan Review:

- D-2** Prior to construction, the applicant shall submit and obtain county approval of a final stormwater plan designed in conformance to CCC 40.380.
- D-3** Prior to construction, the applicant shall submit and obtain county approval of a final transportation design in conformance to CCC 40.350.030.

Pre-Construction Conference:

- D-4** Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the county.

Erosion Control:

- D-5** Prior to construction, the applicant shall submit and obtain county approval of a final erosion control plan designed in accordance with CCC 40.380.
- D-6** A copy of the approved erosion control plan shall be submitted to the Chief Building Official prior to final plat recording.
- D-7** Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.
- D-8** Erosion control facilities shall **not** be removed without county approval.

Excavation and Grading:

- D-9** Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).
- D-10** Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

Water Wells and Septic Systems:

- D-11** Submittal of a “Health Department Evaluation Letter” is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable “Health Department Well/Septic Abandonment Letter” must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy).

DATED this _____ day of December 2004.

Joe Turner, AICP
Clark County Land Use Hearings Examiner